HIGH COURT OF UTTARANCHAL, AT NAINITAL

Leave to Appeal Application No. 59 of 2001
(Old No. 3623 of 1991)

Union of India
Through Shri M.C.Baurae
Income Tax Officer
District Nainital .....Applicant

Versus

1. Shri Chandra Shekhar
   Project Manager
   Nainital Club Project
   U.P. Rajkiya Nirman Nigam Ltd.
   Nainital
2. Sri R. S. Pandey
   Special Chief Judicial Magistrate
   Allahabad .....Respondents

Sri Vinod Sharma learned counsel for the appellant.
Sri Amit Bhatt learned A.G.A. for the State.

Hon'ble J. C. S. Rawat, J.

1. The present leave to appeal application has been filed under section 378 Cr.P.C. against the judgment and order dated 20.08.1990 passed by the Special Chief Judicial Magistrate, Allahabad in case No.559/1983 Bharat Sangh Vs. Chandra Shekhar in which the accused-respondent No.2 was acquitted by the trial court under section 276-B Income Tax Act.

2. The brief facts of the case are that a complaint was filed before the Special Chief Judicial Magistrate, Allahabad against the respondent no.2 alleging therein the accrued tax has not been deducted by the accused from the contractor. As such, he was prosecuted under section 276B Income Tax Act. After recording the evidence, the magistrate had acquitted the respondent no.2 on the ground that the appellant should have arrayed the "Nirman Nigam" as an accused. The respondent no.2 was only an employee and he was

posted as Project Manager of the Nigam. It is also admitted that the said Nigam is an undertaking of the Government. The learned Magistrate while acquitting the accused has held that the Income Tax Department should have arrayed the Nigam as an accused and not to the respondent no.2. Feeling aggrieved by this, the appellant has preferred the present leave to appeal application before this Court.

3. I have gone through the entire judgment and order passed by the trial court. The said tax should have been deducted from the Nirman Nigam under the provisions of section 197(c) read with section 204(iii) of the Income Tax Act. The learned Magistrate was justified in holding that the respondent no.2 was not liable to be prosecuted. In view of the above, I find that the trial court has rightly acquitted the respondent no.2 by a reasoned judgment and there is no infirmity in the impugned judgment. I am completely in agreement with the findings recorded by the court below. Therefore, the leave to appeal is hereby rejected. The appeal stands dismissed accordingly. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J.C.S. RAWAT, J.)

Dated 26.06.2006

LSR